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## FISCAL IMPACT REPORT

SPONSOR: Garcia DATE TYPED: 02/10/03 HB 270

SHORT TITLE: Felony Offenders to Provide Residence Info SB \_\_\_\_\_

ANALYST: Fox-Young

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Significant	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Responses Received From  
 Public Defender Department (PDD)  
 Corrections Department (CD)  
 Attorney General (AG)  
 Administrative Office of the Courts (AOC)  
 Adult Parole Board (APB)

No Response  
 Administrative Office of the District Attorneys (AODA)

### SUMMARY

#### Synopsis of Bill

House Bill 270 amends Section 31-21-21 NMSA 1978, "Conditions of Probation." The bill stipulates that

"as a condition of probation, a court shall order a felony offender to provide it with an affidavit from the owner of the residence where the offender intends to reside during the term of his probation. The affidavit shall confirm that the owner is willing to allow the offender to reside at the owner's residence during such term."

Significant Issues

Corrections Department (CD) notes that, in lieu of or in addition to those placed on probation, the bill **may have been intended to apply to inmates released from prison on parole**. Unlike probationers, who are likely to have a residence to go to, inmates who are up for parole often have difficulty establishing a residence. Offenders are required to submit parole plans, including the name and address of the individual he intends to reside with, for approval. CD indicates that inmates are in some cases using the addresses of individuals who are unwilling to house them.

CD reports that if the bill is amended to refer to parolees rather than probationers, a substantial number of inmates would probably remain in prison serving some or all of their parole period in prison because the owners of residences where the offender wishes to reside will be reluctant to sign affidavits.

The Administrative Office of the Courts (AOC) notes that affidavits may not be readily available in cases where an owner resides overseas, has delegated authority to a management company, or is a corporation rather than an individual. Additionally, AOC notes there is no provision for investigating the accuracy and validity of an affidavit.

The Public Defender Department (PDD) notes that current rules governing conditions of probation require that an offender have a stable residence and that he receive permission from his probation officer before changing residence. PDD offers that depending on the type of felony offense for which an offender is on probation, the owner of the residence may decline the offender's request for a signed affidavit.

The bill may have the unintended effect of displacing offenders and increasing homelessness. Offenders who have difficulty establishing a permanent residence are more likely to violate their conditions of probation.

**FISCAL IMPLICATIONS**

CD notes the burden on probation and parole officers will increase, as they will be required to ensure that inmates' plans meet the provisions of the bill.

CD reports that, as providing affidavits becomes a condition of placement, the number of probation violations will likely increase, spurring a parallel increase in the prison population. An amendment to include parolees rather than probationers would likely grow the prison population increase the number of parolees whose parole plans are approved.

The Public Defender Department (PDD) notes that there is likely to be an increase in the number of felony probation violations filed in district court for offenders failing to comply with the technical requirements of this amendment. Such activity would increase costs for the district attorneys, PDD as well as the courts.

AOC notes that there may be increased costs associated with routine investigation of the accuracy and validity of affidavits.

## TECHNICAL ISSUES

CD notes that the reference to “the board” in the existing statute is outdated. The language dates from a period when “a board of probation and parole” existed. Currently, there is an Adult Parole Board, an entity separate from CD; and the Probation and Parole Division of CD.

PDD notes that it is unclear whether an offender will need a second or subsequent affidavit before being given permission to change residence.

## OTHER SUBSTANTIVE ISSUES

The Attorney General (AG) reports that there is no question that a valid term of probation can include requiring the person on probation to provide his current residence address to his probation officer or the court. AG notes that requiring certification from the owner of the residence appears to fit within the conditions recognized by statute (NMSA 1978 § 31-21-5; 31-21-21). AG cites IMO Dawson, 2000-NMSC-024, State v. Donaldson, (Ct. App. 1983), State v. Gallagher, 100 N.M. 697, 698, 675 P.2d 429 (Ct. App. 1984), State v. Holland (1967).

JCF/prr